



The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Fermina Salas  
359 Broadway Street  
Lawrence, MA 01841

Re: NH Asbestos Abatement Worker Certification

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
No. AF 04-112**

December 17, 2004

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division") to Fermina Salas, pursuant to RSA 141-E as transferred to the Department of Environmental Services by the Laws of NH 2004, Chapter 257 and Env-C 601. The Division is proposing that fines totaling \$100 be imposed against Fermina Salas for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Fermina Salas is an individual having a mailing address of 359 Broadway Street, Lawrence, MA 01841.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS**

1. The Laws of NH 2004, Chapter 257 transferred the authority for regulating asbestos licensing and certification procedures pursuant to RSA 141-E and He-P 5000 to the Department of Environmental Services ("DES"), effective July 1, 2004.
2. RSA 141-E authorizes the Commissioner of the DES to regulate and license any contractor, employer, or individual who engages in asbestos abatement activities or activities involving the disturbance of asbestos at asbestos disposal sites.
3. On July 21, 2004, the Division received an application through the Labor Source Corporation to certify Ms. Fermina F. Salas as a NH asbestos abatement worker.
4. On July 22, 2004, the Division reviewed the application. The training certificate submitted with the application shows completion of an "Asbestos Refresher for Workers – Spanish" course completed on June 25, 2004 at the Lawrence Training School, Inc., Lawrence, MA 01841. The certificate number indicates completion of an "initial 32-hour asbestos worker training course completed in June of 2001," and the examination date is shown as June 25, 2004.

**P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095**  
Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964  
DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

5. The training certificate submitted by Ms. Salas was compared to other certificates received from the Lawrence Training School. The type font of the name and the dates were different from others received and the name of the President/Director of Training was also different. The training date indicated that the refresher course was completed on a Friday. All of the refresher courses for Lawrence Training School are completed on Saturdays.
6. On July 22, 2004, Division personnel requested that Lawrence Training School provide the course rosters of any asbestos training classes completed between June 22 and June 26, 2004.
7. The course roster lists students attending asbestos refresher and initial asbestos courses. The name of Fermina Salas did not appear on any of the course rosters.
8. Based on these facts, the Division has determined that the training certificate submitted by Ms. Fermina Salas with her application was falsified.

#### IV. VIOLATIONS ALLEGED

1. Fermina Salas has violated New Hampshire Administrative Rule He-P 5008.07(b)(2) by willfully submitting false or fraudulent information on or with an application.” For this violation, He-P 5009.03(b)(1) specifies a fine of \$100.

**The total fine being sought is \$100.**

#### V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Fermina Salas has the right to a hearing to contest the Division’s allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, March 14, 2005, at 2:30 pm in Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, Ms. Salas is required to respond to this notice.** Please respond **no later than January 17, 2005**, using the enclosed colored form as follows:

1. If Ms. Salas plans to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If Ms. Salas chooses to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Ms. Salas wishes to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Ms. Salas’ interest in settling.

Ms. Salas is not required to be represented by an attorney. If Ms. Salas choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If Ms. Salas wishes to have a hearing but is unable to attend as scheduled**, Ms. Salas must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If Ms. Salas does not notify the DES Legal Unit in advance and does not attend the hearing, the hearing will be conducted in Ms. Salas' absence in accordance with Env C 204.09.

#### **VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Ms. Salas committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Ms. Salas committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Ms. Salas proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** Ms. Salas did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Ms. Salas did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Ms. Salas was making a good faith effort to comply with the requirement that was violated.
3. Ms. Salas has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Ms. Salas' case which was not known to the Division at the time the fine was proposed.


**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Ms. Salas committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Ms. Salas' opportunity to present testimony and evidence that Ms. Salas did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Ms. Salas has any evidence, such as photographs, business records or other documents, that she believes show that Ms. Salas did not commit the violation(s) or that otherwise support Ms. Salas' position, Ms. Salas should bring the evidence to the hearing. Ms. Salas may also bring witnesses (other people) to the hearing to testify on Ms. Salas' behalf.

**If Ms. Salas wishes to discuss the issues, Ms. Salas must contact the DES Legal Unit at (603) 271-6072 to request an informal meeting or prehearing conference**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.des.nh.gov](http://www.des.nh.gov)). If Ms. Salas has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.

  
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Robert R. Scott  
Director  
Air Resources Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
Michael J. Walls, DES Assistant Commissioner  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Public Information Officer, DES PIP Office  
Robert R. Scott, DES ARD Division Director  
Pamela Monroe, DES ARD  
Joy EH Perkins, DES ARD

\*\*\* RETURN THIS PAGE ONLY \*\*\*

**FERMINA SALAS IS REQUIRED BY LAW TO  
RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN JANUARY 17, 2005**

**APPEARANCE** On behalf of Fermina Salas.

\_\_\_\_\_ I will attend the hearing scheduled for Monday, March 14, 2005, at 2:30pm in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**WAIVER OF HEARING** On behalf of Fermina Salas.

\_\_\_\_\_ I certify that I understand my right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$100 paid to "Treasurer, State of New Hampshire" is enclosed.\*

*\* If payment is made by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

**Michael Sciafani, Legal Assistant**

**Department of Environmental Services ~ Legal Unit**

**6 Hazen Drive, P.O. Box 95**

**Concord, NH 03302-0095**

# ENVIRONMENTAL Fact Sheet



6 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • [www.des.state.nh.us](http://www.des.state.nh.us)

CO-2

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## Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

*This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.*

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.